

**Filed 11/4/04 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2004 ND 208

Gerald B. Packineau, Petitioner and Appellant

v.

State of North Dakota, Respondent and Appellee

No. 20030345

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable Gail H. Hagerty, Judge.

AFFIRMED.

Per Curiam.

Gerald B. Packineau (argued), pro se, North Dakota State Penitentiary, P.O. Box 5521, Bismarck, N.D. 58506-5521, for petitioner and appellant.

Leann Katherine Bertsch (on brief), Assistant State's Attorney, 514 East Thayer Avenue, Bismarck, N.D. 58501, for respondent and appellee.

Packineau v. State

No. 20030345

Per Curiam.

[¶1] Gerald Packineau appealed from a district court order denying his application for post-conviction relief arising from his conviction for gross sexual imposition. Packineau argued that he received ineffective assistance of counsel during his trial and that a provision of his probation was inappropriate. Following a hearing, the district court ruled Packineau was not denied effective assistance of counsel and Packineau could request alteration of his probation at a later time. On appeal, Packineau argues the district court erred in denying his application for post-conviction relief and raises additional issues that were not presented to the district court. Issues not raised in the district court cannot be raised for the first time on appeal. See Bay v. State, 2003 ND 183, ¶ 14, 672 N.W.2d 270; Murchison v. State, 1998 ND 96, ¶ 15, 578 N.W.2d 514. We affirm the order denying post-conviction relief under N.D.R.App.P. 35.1(a)(2).

[¶2] Gerald W. VandeWalle, C.J.
Mary Muehlen Maring
William A. Neumann
Carol Ronning Kapsner
Wade Lykken Webb, D.J.

[¶3] The Honorable Wade Lykken Webb, D.J., sitting in place of Sandstrom, J., disqualified.